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**FISCAL IMPACT STATEMENT**

**LS 7032**

**BILL NUMBER:** SB 601

**NOTE PREPARED:** Jan 14, 2013

**BILL AMENDED:**

**SUBJECT:** Various Changes to the Criminal Code.

**FIRST AUTHOR:** Sen. Steele

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. *Community Corrections and Probation* – It makes various changes to the criminal code, including changes to the law concerning community corrections and probation.
- B. *Probation Improvement Fund* – It establishes the Probation Improvement Fund and appropriates \$1.9M annually from the Department of Correction (DOC) annual appropriation.
- C. *Judicial Center Drug and Alcohol Programs Fund* – It adds changes to the law concerning communicable disease crimes, battery, hazing, obstruction of traffic crimes, interference with medical services crimes, kidnapping, confinement, criminal mischief, railroad mischief, computer crimes, deception and fraud crimes, timber spiking, offenses against general public administration, criminal gang activity crimes, stalking, offenses against public health, child care provider crimes, and weapon crimes.
- D. *Credit-Restricted Felons* – It removes this felony classification for persons who have been convicted and committed for certain crimes involving child molesting and murder.
- E. *Drug Crimes and Protection Zones* – It changes the weight thresholds for determining the severity of crime and reduces the protective zone from 1,000 feet to 500 feet.
- F. *Earned Credit Time* – It increases the amount of credit time that an offender may earn for completing one or more career, technical, or vocational education programs approved by DOC. It specifies that credit time must be directly proportional to the time served and course work completed while incarcerated. It requires DOC to adopt rules to implement this change. It changes the way that an

offender's release date is determined by applying earned credit time. It reduces the total amount of earned credit time that an offender can earn from four to two years.

- G. *Theft* – It changes the thresholds for penalties related to theft.
- H. *Neglect Causing Death or Serious Bodily Injury* – It makes neglect causing death or serious bodily injury a nonsuspendable crime.
- I. *Repeal and Replace* – It repeals the law concerning criminal deviate conduct, and consolidates the crime of criminal deviate conduct into the crime of rape. It repeals laws concerning carjacking, and failure of a student athlete to disclose recruitment.
- J. *Four Felony Classes to Six Felony Levels Felony Penalty Classification* – It removes the current four-level felony penalty classification and replaces that classification with a six-level felony penalty classification. (This bill does not define the new penalty ranges.)
- K. *Legislative Study* - It urges the Legislative Council to require an existing study committee to evaluate the criminal law statutes in IC 7.1 and IC 9 and to make recommendations to the General Assembly for the modification of the criminal law statutes in those titles.
- L. *Technical Corrections and Conforming Amendments*- It also makes technical corrections and conforming amendments.

(The introduced version of this bill was prepared by the Criminal Code Evaluation Commission.)

**Effective Date:** July 1, 2013; July 1, 2014.

**Explanation of State Expenditures:** *Chief and Deputy Chief Probation Officers (IC 11-13-1-1)* – This provision requires each probation department to have both a chief and deputy chief probation officer. The salaries of these probation officers must be fixed by a salary schedule adopted by the county or municipal fiscal body under IC 36-2-16.5-3. The salary schedule must comply with the minimum compensation requirements for probation officers adopted by the Indiana Judicial Conference under IC 11-13-1-8. The minimum salary of the chief and deputy chief probation officer must be reimbursed from the state General Fund.

The 2012 minimum salary schedule takes into account three factors: the years of experience for probation officers, the number of probation officers that are supervised in each department, and whether the probation officer has a master's or doctorate degree from an accredited college or university.

Currently, information on the number of chief and chief deputy probation officers is unavailable, so the impact of this provision is indeterminable at this time.

*Probation Improvement Fund (IC 11-13-2.5)* – The bill appropriates \$1.9 M annually from DOC's appropriation to the Probation Improvement Fund. Donations, gifts, and money from transfers may also be directed to this fund. DOC would recommend grants and the Indiana Judicial Conference may award a grant from the fund to a county probation department that supervises convicted felons.

*Judicial Center Drug and Alcohol Programs Fund (IC 12-23-14-17)* – Under current law, the Judicial Center Drug and Alcohol Programs Fund is used to administer, certify, and support alcohol and drug service programs. As proposed, the Indiana Judicial Center could award a grant from the fund to a probation department or a community corrections program to increase substance abuse treatment access for individuals on probation or individuals placed in a community corrections program who are under court supervision and who have been diagnosed with a substance abuse disorder or co-occurring disorder. The Judicial Center would consult with the Division of Mental Health and Addiction and local probation departments or community

corrections programs in determining the amount of the grants. Any mental health and substance abuse counseling services provided by the grants would be provided by certified mental health or addiction providers as determined by the Division of Mental Health and Addiction.

*Neglect Causing Death or Serious Bodily Injury (IC 35-50-2-2)* – Any added prison population due to the increased stays in prison will depend on the number of offenders who are assigned to Level 1 or Level 2 felonies and the new minimum sentences that they would receive. This provision would likely increase the number of offenders who have extended stays because the offenders would have to be incarcerated for a mandatory minimum time.

To estimate the added number of offenders who might be affected, LSA assumed that in future years a portion of offenders who might otherwise receive a sentence that was less than the mandatory minimum sentence would now serve the mandatory minimum sentence.

Between 2007 and 2012, about 20% of Class A felony offenders received a prison sentence that was less than the mandatory minimum of 20 years (7 out of 36 offenders), while 31% of Class B felons (38 out of 123) received a prison sentence that was less than 6 years. Any added offenders will depend on the sentencing lengths associated with the felony levels.

*Earned Credit Time (IC 35-50-6-3.3)* – This provision will make five significant changes to how release dates will be affected, likely lengthening the stay of offenders who have accumulated earned credit time.

Under current law, offenders in DOC facilities can receive two types of credit time (called “time cuts”) that can reduce their length of stay in DOC facilities. First, under IC 35-50-6-3, offenders in the Class I credit classification can receive up to one day off for each day they are compliant with facility rules (“good time” credit). Second, if they are in the Class I credit classification, they can also receive earned credit time by successfully completing educational programs, vocational and technical programs, substance abuse programs, basic life skills programs, and reformatory programs.

The amount of earned credit time that an offender can receive is the lesser of four years or one-third of the person’s total applicable credit time. Offenders successfully completing bachelor’s degrees can earn two years credit time, and offenders completing associate’s degrees can earn one year of credit time.

DOC calculates the release date for an offender by first applying the “good time” credit (generally 50%) and then subtracting the earned credit time.

This bill will make five significant changes to how release dates will be affected.

(1) The bill limits the amount of earned credit time that offenders can receive for successfully completing associate’s and bachelor’s degrees to one and two years, respectively. Consequently, offenders who have completed more than one associate’s or bachelor’s degree would be limited to receiving either one year of credit, even if the offender completed more than one associate’s degree, and two years, even if the offender completed more than one bachelor’s degree.

The number of offenders who would be affected by this bill would depend on whether the bill would be retroactive to include offenders who have earned degrees prior to July 1, 2014, and have earliest possible release dates after July 1, 2014. The bill is silent on this issue. DOC reported that 1,020 offenders have

received either bachelor's or associate's degrees before December 2012 and have earliest possible release dates after July 1, 2014, and will be younger than 72 years on the release date.

<b>Offenders In DOC Facilities With An Earliest Possible Release Date After July 1, 2014, and Who Will Be Younger Than 72</b>									
Year of Earliest Possible Release									
Degree Completed	2014	2015	2016	2017	2018	2019	2020	After 2020	Grand Total
Associate	55	90	72	48	40	44	34	207	590
Bachelor	30	54	48	56	34	26	21	161	430
Grand Total	85	144	120	104	74	70	55	368	1020

(2) The bill increases from six months to one year the amount of earned credit time that offenders can receive for completing one or more career and technical or vocational education programs. This could reduce the length of stay for offenders who enroll in these types of programs.

(3) The bill specifies that earned credit time is to be directly proportional to time served. Depending on how DOC formulates the rules to implement this section, the length of stay for some offenders may increase.

(4) The bill changes how earned credit time is to be applied to determine the release date. Currently, any good time credit is subtracted from the length of stay, and then any earned credit time is applied. As proposed, earned credit time would be applied first, and then the good time credit is applied. Offenders with no earned credit time will not be affected by this provision. The length of stay of any offenders with earned credit time will be extended, depending on the amount of earned credit that they have available.

(5) The bill limits the maximum amount of earned credit time to the lesser of four years or one-third of the person's total applicable credit time. Applicable credit time is considered the total amount of earned credit time. Consequently, this provision would increase the length of stay of offenders who currently have more than two years of credit time.

*Credit Restricted Felons (IC 35-31.5-2-72)* – This section will reduce the length of stay for certain offenders who have been committed to DOC for child molesting.

Under IC 35-50-6-3 offenders are assigned to different credit classes based on their behavior.

<b>Credit Class</b>	<b>Number of Days an Offender Serves to Receive One Day of “Good Time” Credit By Credit Class</b>
I	1
II	2
III	none
IV	6

The Credit Class IV offenders are the credit-restricted offenders that this section affects. There were 182 credit-restricted felons who were in DOC facilities on January 1, 2013, the most recent day that DOC has information on these sex offenders.

These Class IV offenders would be reassigned to either Class I, II, or III. Offenders in Class IV would have their lengths of stay reduced if they are reassigned to Classes I or II.

*Drug Thresholds (IC 35-48)* – This section changes the enhancing circumstances and the weights of drugs to determine the felony level.

Overall, the enhancing circumstances in this bill make the following changes:

- (1) The enhancement could be applied when persons under 18 years of age can be reasonably expected to be present in either the park or the school property.
- (2) The distance in the protective zones for schools and public parks would be reduced from 1,000 feet to 500 feet.
- (3) Family housing complexes and youth program centers would not be included in the protective zone.

The following table compares and contrasts the current enhancements with the enhancing circumstances in the proposed bill.

<b>Enhancing Circumstances as Factor in Determining Felony Level for Controlled Substances (IC 35-48-1-16.5)</b>		
<u>Circumstance</u>	<u>In Existing Law?</u>	<u>In Proposed Bill?</u>
Prior conviction for dealing in a controlled substance that is not marijuana, hashish, hash oil, salvia divinorum, or a synthetic drug	Limited to marijuana	Yes
School bus	Yes	Yes
Person under 18 or at least 3 years junior	Yes	Yes
Manufactured or financed the manufacture of drug	Yes	Yes
Distance from school property or public park	1,000 feet	500 feet

<b>Enhancing Circumstances as Factor in Determining Felony Level for Controlled Substances (IC 35-48-1-16.5)</b>		
Time Element	No	Offense occurred while person under 18 reasonably expected to be present
Distance from family housing project or youth program center	1,000 feet	No

The following tables describe in further detail the drug weights that are proposed by this bill as compared to current law.

<b>Proposed Changes in Drug Dealing and Manufacturing Offenses for Cocaine, Methamphetamine, and Schedule I, II, or III Controlled Substances (IC 35-48-4-1, 1.1, and 2)</b>		
	<u>Current Law</u>	<u>Proposed</u>
Less than 3 grams	Class B Felony	Level 5 Felony
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class A Felony	Level 4 Felony
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A Felony	Level 3 Felony
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A Felony	Level 2 Felony
Manufacturing meth and causing explosion that results in serious bodily injury	Class A or B Felony	Level 2 Felony

<b>Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule IV Controlled Substances (IC 35-48-4-3)</b>		
	<u>Current Law</u>	<u>Proposed</u>
Less than 3 grams	Class C Felony	Level 6 Felony
Less than 3 grams and enhancing circumstance	Class B Felony	Level 5 Felony
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B Felony	Level 5 Felony
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B Felony	Level 4 Felony
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B Felony	Level 3 Felony

<b>Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule V Controlled Substances (IC 35-48-4-4)</b>		
	<u>Current Law</u>	<u>Proposed</u>
Less than 3 grams	Class D Felony	Class A Misdemeanor
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B Felony	Level 6 Felony
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B Felony	Level 5 Felony
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B Felony	Level 4 Felony

<b>Proposed Changes in Possession Offenses for Cocaine or Methamphetamine (IC 35-48-4-6, 6.1)</b>		
	<u>Current Law</u>	<u>Proposed</u>
Less than 3 grams	Class D Felony	Level 6 Felony
Less than 3 grams and enhancing circumstances	Class C or B Felony	Level 4 or 5 Felony
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A Felony	Level 4 Felony
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A Felony	Level 3 Felony

<b>Proposed Changes in Possession Offenses for Schedule I, II, III, IV Controlled Substances (IC 35-48-4-7)</b>		
	<u>Current Law</u>	<u>Proposed</u>
Any amount	Class D Felony	Class A Misdemeanor
Any amount and enhancing circumstances	Class C	Level 6

<b>Proposed Changes in Dealing Offenses for Marijuana, Hash Oil, Hashish, Salvia Divinorum, or Synthetic Drug (IC 35-48-4-10)</b>		
	<u>Current Law</u>	<u>Proposed</u>
Less than 30 grams	Class A Misdemeanor	Class B Misdemeanor
Between 30 grams and 10 pounds or between 2 and 300 grams of hash oil, hashish, salvia divinorum, or synthetic drug or less than 30 grams and prior conviction	Class D Felony	Class A Misdemeanor
More than 10 pounds or more than 300 grams of hash oil, hashish, salvia divinorum, or synthetic drug of any amount and enhancing circumstance	Class C Felony	Level 6 Felony
More than 50 pounds of marijuana or 1,500 grams of hash oil, hashish, salvia divinorum, or synthetic drug	Class C Felony	Level 5 Felony

<b>Proposed Changes in Possession Offenses for Marijuana, Hash Oil, Hashish, Salvia Divinorum, or Synthetic Drug (IC 35-48-4-11)</b>		
	<u>Current Law</u>	<u>Proposed</u>
Less than 30 grams of marijuana or 2 grams of hash oil, hashish, salvia divinorum, or synthetic drug	Class A Misdemeanor	Class C Misdemeanor
More than 30 grams or 2 grams of hash oil, hashish, salvia divinorum, or synthetic drug or less than 30 grams and prior conviction	Class D Felony	Class A or B Misdemeanor

*Theft Thresholds (IC 35-43-4-2)* – Under current law, stealing any item can result in a Class D felony. As proposed, this bill would make stealing any item with a value of less than \$750 a Class A misdemeanor. The following table describes in more detail how the new felony levels would be assigned by the value of the item that is stolen.

<b>Value of Item Stolen</b>	<b>Current Law</b>	<b>Proposed</b>
Less than \$750	Class D Felony	Class A Misdemeanor
Between \$750 and \$50,000 or less than \$750 and prior conviction	Class D Felony	Level 6 Felony
Between \$50,000 and \$100,000	Class D Felony	Level 5 Felony
More than \$100,000	Class C Felony	Level 5 Felony

*Four Felony Classes to Six Felony Levels Felony Penalty Classification* – To estimate how this bill might affect DOC's offender population, LSA used commitment data between FY 2007 and FY 2012 as the basis of this analysis. The following table shows how these offenders could be distributed if these offenders are assigned various levels.



	Class or Level	Current Felony Class						Grand Total
		Class A	Class B	Class C	Class D	Misdemeanor	Murder	
Proposed Felony Level	1	152						152
	2	198	368					566
	3	102	851	85				1,038
	4	92	674	263				1,029
	5	5	1,064	3,173	715			4,957
	6		51	18	5,953	*		6,022
	Misdemeanor			0	1,191			1,191
	Murder						96	96
	Grand Total	549	3,008	3,539	7,859	0	96	15,051
	* Potential increase but indeterminable							

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Consolidation of Community Corrections and Probation (IC 11-12-1-2)*  
– In counties or combinations of counties that have established a community corrections program, a court with authority to impose probation may, with the consent of the community corrections advisory board, establish and operate a consolidated probation and community corrections department.

*Chief and Deputy Chief Probation Officers (IC 11-13-1-1)* – The number of probation departments that this bill would affect is currently not known.

*Sentencing Changes* – This bill could increase the number of offenders who might remain at the local level, increasing the number that would be either incarcerated in county jails or placed on probation. LSA estimates that 1,190 offenders could be reclassified as misdemeanors.

### **Explanation of Local Revenues:**

**State Agencies Affected:** DOC; Indiana Judicial Center; Department of Mental Health and Addictions.

**Local Agencies Affected:** County sheriffs, trial courts, probation offices, community corrections programs.

**Information Sources:** Department of Correction Offender Information System

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